

Comments of Harold Hallikainen
Regarding CG Docket No. 02-278 and 05-338
Telephone Consumer Protection Act of 1991 and
Junk Fax Prevention Act of 2005

16 January 2006

It appears the recent Congressional action regarding junk faxes weakens the Commission's oft delayed rule requiring a signed authorization indicating a willingness to receive promotional faxes before they can be sent. The signed authorization seems simple enough to obtain for those businesses that indeed have an Established Business Relationship. This "opt in" approach is far preferable to the "opt out" approach adopted by Congress. Businesses could include a couple check boxes on their order or subscription forms that would indicate whether the customer indeed wishes to receive promotional material by fax. Though Congress has decided this is not necessary, I would encourage all businesses that intend to send promotional material by fax attempt to determine if the customer wishes to receive such material by fax prior to sending the first piece of promotional material.

As has been pointed out by others, the vast majority of the problem with promotional faxes does not appear to be with companies with whom there is an EBR. Thus changes in the EBR exemption (timing, signed authorizations, etc.) will have little effect on the volume of junk faxes.

I do not believe there should be an exemption for non-profit organizations to the requirement that opt-out information be included in the fax. It should be as easy as possible for people to stop faxes from anyone with whom they have an EBR.

I do not believe there should be a small business exemption to the requirement that fax advertisers include a cost free method of opting out of future advertising faxes from those small businesses with which they have an EBR. Acceptable cost free methods would include a toll free telephone number, an offer to accept collect calls on a non-toll free telephone number, an email address that accepts opt-out requests, and a web site that accepts opt-out requests. A local telephone number that is indeed cost free to all fax recipients (fax transmission was to a limited area) would also be acceptable. Note, again, that a cost-free opt out mechanism does not excuse a fax advertiser from the requirement for an EBR.

There may be circumstances where a consumer does indeed wish to receive unsolicited commercial faxes from a particular sender even though there may not be an existing business relationship. A consumer may be in the market for a new home and wish to receive information from real estate agents even though they have not business relationship. In such cases, the fax advertiser should receive a written authorization for such transmissions. The written authorization should include an end date. As the end date approaches, the fax advertiser can ask the recipient if a renewal of the authorization is desired.

Since the vast majority of junk faxes received are from companies with which the receiver has no EBR, the receiver has no need to use the opt-out procedure. I, instead, file complaints with the FCC for each such fax received. I hope that at some point Commission enforcement of its rules will result in a reduction of these faxes. My review of FCC website documents citing 64.1200 (see <http://www.hallikainen.org/FCC/FccRules/CiteFind/0641200.htm>) reveals, however, hundreds, or perhaps thousands, of citations, but very few forfeitures. I encourage the Commission to increase the number of forfeitures issued for this violation of the rules.

Thank you for the opportunity to comment in this proceeding.

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